

Dorn Oens
6985 Vista Del Rincon Dr.
Ventura, CA 93001
661-804-3510

FILED

2010 MAR -5 PM 12:08

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

*filed
paid
I/S 21
Days Summary*

DORN OENS,
PLAINTIFF

VS

INDEPENDENT HOME LOAN,
FIRST NATIONAL T.D. SERVICE,
NATIONAL T.D. SERVICE,
MARSHALL R. MURPHY,
MARIELLEN L. MURPHY,
PAUL MARGOLIS,
BARRY NISEN,
DOES 1-10

DEFENDANTS

CASE # **CV10 1636 • DSF (R2x)**

VERIFIED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF TO VOID POWER OF SALE

JURY TRIAL DEMANDED

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
TO VOID POWER OF SALE CLAUSE**

NOW COMES Plaintiff, Dorn Oens (hereinafter collectively referred to as Plaintiff), who files this Verified Complaint for Emergency Declaratory and Injunctive Relief, to Void Power of Sale, and, Cognovit Note/Confession of Judgment, and, to further Enjoin Defendants from Selling, Converting, or, by any means whatsoever, Dispossessing Plaintiff of Property, until all Facts, are Clarified. In support thereof, Plaintiff hereby avers as follows:

INTRODUCTION

1. This is a civil rights action under 42 U.S.C. § 1983 for violation of Plaintiff's constitutional rights as enumerated under the First, Fifth, Seventh and Fourteenth Amendments to the United States Constitution.
2. Plaintiff invokes the power of this Court for the deprivation of Plaintiff's Due Process rights; deprivation of Plaintiff's right to redress grievances and

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF TO VOID POWER OF SALE

3/5/2010 12:10:45 AM Receipt #: 103872
Cashier : KPAGE ILA 1-11
Paid by: DORN DENS
2:CV10-01636
2010-036900 5 - Civil Filing Fee(1)
Amount : \$82.00
2:CV10-01636
2010-510000 11 - Special Fund F/F(1)
Amount : \$190.00
2:CV10-01636
2010-006400 Filing Fee - Special(1)
Amount : \$200.00
Cash Payment : 358.00

access to court; deprivation of Plaintiff's right to property; and, for the deprivation of Plaintiff's right to have a jury, as afforded under the First, Fifth, Seventh and Fourteenth Amendments, of the united States Constitution, and, as found in the California State Constitution.

3. Plaintiff likewise seeks redress for violations by the Defendants as afforded Plaintiff under the Fair Debt Collection Practices Act.

4. Additionally, Plaintiff invokes this court's authority to determine salient questions of contract; including, but not limited to, controversies arising out of unconscionability, adhesion, material misrepresentation and fraudulent concealment.

JURISDICTION AND VENUE

5. This action arises under the United States Constitution, particularly, for violations of Plaintiff's rights under the First, Fifth, Seventh and Fourteenth Amendments; and, under Federal Law, as enumerated under 28 U.S.C. §§ 2201, 2202; and, 42 U.S.C. §§ 1983, and 1985.

6. This Court has original jurisdiction over Plaintiff's claims by operation of 28 U.S.C. §§ 1331 and 1343, and, supplemental jurisdiction over Plaintiff's state claims, pursuant to 28 U.S.C. § 1367.

7. This Court is vested with authority to issue the requested Declaratory Relief, pursuant to 28 U.S.C. § 2201 and, as further defined under Rule 57, of the Federal Rules of Civil Procedure.

8. This Court has the authority to award the requested Injunctive Relief, under Rule 65, of the Federal Rules of Civil Procedure, and pursuant to 28 U.S.C. §§ 2202 and 1343(a)(3).

9. This court has authority to award Plaintiff, damages arising under violations of the Fair Debt Collection Practices Act.

10. This Court has authority to award Plaintiff damages under 28 U.S.C. § 1343(a)(1)(2)(3)(4).

1 **11.** This Court has authority to award attorney fees, as to be incurred by Plaintiff under 42
2 U.S.C. § 1988.

3 **12.** Plaintiff avers venue is proper under 28 U.S.C. § 1391 as the claims set forth in this
4 complaint arose here, and because of information and belief of Plaintiff, most if not all of the
5 Defendants are located in and/or maintain a registered office within this venue.

6 **13.** In the alternative, Plaintiff avers that in the absence of the above, this Court retains venue
7 over the claims set forth herein, under 28 U.S.C. § 1332 governing diversity of the parties.

8
9 **PARTIES**

10 **14.** Plaintiff Dorn Oens is an adult individual, whom at present to the filing of this complaint,
11 owns real property located at 536 North U St., Lompoc, CA 93436.

12 **15.** Defendant Independent Home Loan is, at all material times relevant to this complaint, claims
13 to be the original lender. Defendant lists their address as P.O. Box 230, North Hollywood,
14 CA 91603.

15 **16.** National T.D. Service has been named as a substitution of Trustee under Deed of Trust by
16 means of substitution of trustee document executed on January 7, 2010. Former Trustee
17 under Deed of Trust being First National T.D. Service, Defendant National T.D. Service, as
18 successor trustee, lists their address as 950 County Square Drive, Suite 106, Ventura, CA
19 93003.

20 **17.** Defendants Robert L. Murphy and Mariellen Murphy has been listed upon the Deed of Trust
21 as beneficiary under security agreement acting as a Trustee for lender and lenders
22 successors and assigns.

23
24 ***WARNING NOTICE: DEFENDANT PARTIES HAVE HEREBY BEEN NOTICED BY THIS***
25 ***COMPLAINT AND SERVICE THEREOF UPON ALL ABOVE LISTED DEFENDANTS,***
26 ***THAT ANY FURTHER PROCEEDINGS TO VIOLATE THE DUE PROCESS OF***
27 ***PLAINTIFF WILL BE CAUSE TO RESULT IN LOSS OF ANY CLAIM OF IMMUNITY.***
28

1 **ACTUAL CONSTRUCTIVE NOTICE: TO ALL NAMED DEFENDANTS HEREIN, YOU ARE**
 2 **ADVISED TO PRODUCE THE AFOREMENTIONED DOCUMENTS – IF YOU PROCEED**
 3 **IN SELLING OF THIS PROPERTY YOU MUST PRODUCE THE ACTUAL UNALTERED**
 4 **PROMISSORY AND TRUSTEE NOTES. IN BEING SOLD THOSE NOTES WOULD**
 5 **REMAIN IN THE STREAM OF COMMERCE AND BOTH NOTES MUST BE RETURNED**
 6 **OR AN ASSUPSIT SUIT WILL BE FILED TO COLLECT THE ACTUAL VALUE OF BOTH**
 7 **NOTES AND INCLUDING BUT NOT LIMITED TO ANY OTHER ACTION TO**
 8 **POTENTIALLY INCLUDE A CRIMINAL COMPLAINT FOR VIOLATIONS OF 18 USC**
 9 **SECTIONS 1621 AND 2076.**

10 **PROCEDURAL HISTORY**

- 11
- 12 **18.** Plaintiff hereby incorporates all previously numbered paragraphs as if they are set forth at
 13 length, herein.
- 14 **19.** On or about January 6, 2007, Dorn Oens, unwittingly executed a Deed of Trust; the exact
 15 terms of which, and, the extent to which it adversely affected Plaintiff's rights, without
 16 recourse, were purposely left unknown. The Deed of Trust was subsequently recorded with
 17 the County Recorders Office.
- 18 **20.** The aforesaid Deed is void of any explicit warning(s) that upon Plaintiff's acknowledgement
 19 thereof, stripped Plaintiff of certain fundamental rights as otherwise guaranteed by the
 20 United States Constitution and the applicable Amendments appertaining thereto.
- 21 **21.** On or about January 19, 2010, a Notice of Trustee Sale was issued by National T.D.
 22 Service.
- 23 **22.** It is alleged that National T.D. Service is without lawful authority attempting to deprive Dorn
 24 Oens of property by means of fraud as spelled out extensively in this complaint.

25 **FIRST CAUSE OF ACTION FOR DEPRIVATION OF PLAINTIFF'S DUE PROCESS**

- 26
- 27 **23.** Plaintiff hereby incorporates all previously numbered paragraphs as if they are set forth at
 28 length herein.

- 1 **24.** Plaintiff, avers that, prior to, during and up to recent event, Plaintiff had no knowledge
2 whatsoever as to particular terms contained within the Deed of Trust, which, Plaintiff learned
3 much later, contained, inter alia, a small and somewhat hidden and/or disguised provision,
4 known as a Power of Sale Clause that, Plaintiff now finds defendant wanton to, individually
5 and severally invoke, in order to literally confiscate Plaintiff's property without due process.
- 6 **25.** Whereas, normally, at minimum, each page of an important (life-altering) document, such as
7 a Deed of Trust, would require initialing of the party executing it, (as to signify the obligor's
8 acknowledgement thereof). Defendants furthered their concealment by not only directing
9 Plaintiff away from certain terms/clauses and alike, but are wholly without evidence via
10 initialing of these terms/clauses, that would have otherwise alerted Plaintiff to the extent of
11 what rights were truly being abrogated.
- 12 **26.** Plaintiff believes and therefore avers, that Defendants willfully and intentionally concealed
13 the aforesaid Clauses, and any irrevocability thereafter imparted to the sole detriment of
14 Plaintiff, including, but not limited to, the preclusion to commence any action in defense of
15 Plaintiff's rights, for the expressed purpose of depriving an otherwise unknowing Plaintiff of
16 fundamental rights to Due Process, by nothing less than despicable and clearly
17 unconscionable means.
- 18 **27.** Federal questions of constitutionality arise from the conduct and nature of Defendants'
19 actions, both individually and collectively, insofar as to the inherent rights that may be
20 otherwise enjoyed by Plaintiff, as insured under the Fifth and Fourteenth Amendments to
21 the United States Constitution; and, as to certain statutorily clothed tetherings upon ones
22 rights; particularly, a Power of Sale clause, and the irrevocable means by which it attaches,
23 in defiance of the Supremacy Clause of the United States Constitution.
- 24 **28.** The Fourteenth Amendment to the United States Constitution reads, in pertinent part "All
25 persons born or naturalized in the United States, and subject to the jurisdiction thereof, are
26 citizens of the United States and of the State wherein they reside. No State shall make or
27 enforce any law which shall abridge the privileges or immunities of citizens of the United
28 States; nor shall any State deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

29. Plaintiff states that Amendment V of the Constitution of the United States provides the same answer being raised by the Plaintiff that: "No person shall be deprived of life, liberty, or property without due process of law." A similar provision exists in all the state constitution; the phrases "Due Course of Law", and the "Law of the Land" are sometimes used; but all three of these phrases have the same meaning and that applies conformity with the ancient and customary laws of the English people or laws indicated by parliament. Davidson v. New Orleans 96 U.S. 97, 24, L Ed 616.
30. The Supremacy Clause of the United States Constitution, Article VI, paragraph 2, mandates that State judges, regardless of state constitutional considerations, and laws enacted to the contrary, by effectuating the United States Constitution and its amendments as being the "supreme law of the land".
31. The Supremacy Clause reads in pertinent part, " This Constitution and the Laws of the United States in Pursuance thereof; and all treaties made or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or the Laws of any State to the contrary notwithstanding."
32. The Due Process Clause of the United States Constitution requires "timely individual notice...., before their property can be adversely affected". See Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694,707 (1988)
33. Plaintiff was (unknowingly) deprived of Due Process (and other) rights, as guaranteed under the Fourteenth Amendment of the United States Constitution and, the California State Constitution; as, Defendants', in the first instance, through unconscionable means, caused to be executed a certain Deed of Trust, which, unknown, nor otherwise explained to Plaintiff, lacked the proper "Notice", having substituted in lieu of, an obscure and/or as yet detected provision for the unfettered power of sale of Plaintiff's property.

- 1 **34.** Notice is a Due Process issue, that in the absence thereof, constitutes the abrogation of
2 Plaintiff's substantive and procedural due process rights as afforded under the **Fifth (5th)**
3 and **Fourteenth (14th) Amendments**, guaranteed Plaintiff by the **United States**
4 **Constitution.**
- 5 **35.** **Mullane v. Central Hanover Bank & Trust Co.**, 339 U.S. 306 (1950) ("*An elemental and*
6 *fundamental requirement of due process in any proceeding which is to be accorded finality*
7 *is notice reasonably calculated, under all the circumstances, to apprise interested parties of*
8 *the pendency of the action and to afford them an opportunity to present their objections.*")
- 9 **36.** The Constitution of the United States and California makes it illegal for any one to take
10 property without just compensation and by this amendment (5th) there can be no proceeding
11 against life, liberty, or property which may result in the observance of those general rules
12 established in our system of Jurisprudence for the security of private rights which
13 guarantees to each citizen the equal protection of the laws and prohibits a denial thereof by
14 any Federal official." (See rights) **Bolling v. Sharpe, 327 U.S. 497. U.S. vs Kuwzbzva**
15 **(DC-CAL) 56F Supp. 716.**
- 16 **37.** The terms "due process of law" and "natural rights" as used in the Federal Constitution
17 and/or the Declaration of Independence, have been repeatedly declared to be the exact
18 equivalent of the phrase "law of the land" as used in the **Magna Charta. 16 Am. Jur. 2d**
19 **547:**
- 20 **38.** Plaintiff seeks this Honorable court's immediate intervention and subsequent determination
21 of the foregoing, for purposes of protecting Plaintiff's constitutional and other rights as
22 otherwise afforded Plaintiff.

23

24 **SECOND CAUSE OF ACTION FOR DEPRIVATION OF PLAINTIFF'S RIGHTS UNDER COGNOVIT NOTE**

- 25 **39.** Plaintiff hereby incorporates all previously numbered paragraphs as if they are set forth at
26 length herein.
- 27 **40.** Upon information and belief of Plaintiff, a power of sale clause, whether evidenced or not,
28 within a Deed of Trust, is akin in performance to a cognovit note and/or confession of

judgment, however, it operates far more insidiously; as, it specifically robs the (unknowing) maker of certain or otherwise assured rights and remedies, including, but not limited to Due Process, and redress by appeal, while wholly evading the requisite (form and manner of) noticing as encumbering cognovits or confessions.

41. Upon information and belief of Plaintiff, the hidden power of sale clause, which in effect, creates a cognovit note/confession of judgment, as irrevocably granted in a Deed of Trust, does just that; it creates conditions that are in violation of the California Constitution.
42. WHAT IS A COGNOVIT NOTE? A cognovit note is not an ordinary note. It is indeed an extraordinary note, which, authorizes an attorney to confess judgment against the person or persons signing it. It is written authority of the debtor and a direction by them for the entry of a judgment against debtor, if the obligation set forth in the note is not paid when due.
43. Such a judgment (of confession) may be taken by any person or any company holding the note, only if specifically and diligently pointed out and discussed as to the legal ramifications in so doing, for it cuts off every defense which the maker of the note might otherwise possess. It likewise cuts off all rights of appeal from any judgment taken on it.
44. According to The United States Supreme Court, "a cognovit note is the ancient legal device by which the debtor consents in advance to the holder's obtaining a judgment without notice or hearing, and possibly even with the appearance, on the debtor's behalf, of an attorney designated by the debtor".
45. Justice Blackmun, expressing the unanimous view of the court in Overmyer v. Frick, 405 U.S. 174, 92 S.Ct. 775, L.Ed.2d 124 (1972), stated the criteria for establishing constitutionality of a Cognovit Note is not determine upon the theory of the note but the method used by both parties to afford each other due process protection afforded by the Fourteenth Amendment. (*Emphasis added*)
46. Justice Blackmun stated, "...[i]t was held that (1) a cognovit clause was not, per se, violative of the Fourteenth Amendment due process requirements as to prejudgment notice and hearing, and (2) under the facts in the instant case, (Overmyer) due process was not violated by the entry of the confessed judgment, since the record established that the debtor

1 had knowingly and voluntarily waived its rights to notice and hearing, with full awareness of
2 the legal consequences, by executing the cognovit note, which was supported by
3 consideration from the creditor, and which had resulted from negotiations between the
4 parties of equal bargaining power,... *Id* (Emphasis added)

5 47. Justice Douglas, joined by Justice Marshall concurring, stated, in effect that, (1) the record
6 must establish that a clear and unmistakable, voluntarily and intelligently valid waiver of the
7 debtor's constitutional rights, (2)... a trial judge was required to vacate a judgment obtained
8 through a cognovit clause when presented sufficient evidence of an affirmative defense to
9 pose a jury question, a preponderance of evidence burden not being imposed, and (3) the
10 preponderance of the evidence in the (present) case does not support even a conclusionary
11 finding that Plaintiff was even aware of the existence of any cognovit note, let alone
12 intentionally, deliberately, knowingly and intelligently waive due process rights.

13 48. Justice Douglas, further observed, "Debtors receive the benefit of credit at a lower rate of
14 interest than they would receive if they did not give the creditor the right to confess judgment
15 against them. Nevertheless, the right to be heard in court is central to our system of justice,
16 and, as with other constitutional rights, there is no presumption of waiver." Overmyer, 405,
17 U.S. 174, 31 L. 2d 124, 92S.Ct. 775 (1972) and its companion case, Swarb v. Lennox,
18 405 U.S. 191, 31 L. ed.2d 138, 92 S.Ct. 767 (1972) and at 186, 188. (Emphasis added)

19 49. Based upon the Defendants' lack of credible evidence and/or proof that Plaintiff ever waived
20 or was ever advised of legal detriment upon the signing of what must be characterized, at
21 best, as a hidden cognovit clause, is just preposterous and is sufficient to warrant
22 presentation to a jury.

23 50. In order to help determine the validity of the cognovit note and/or confession of judgment
24 before this Court, one must concede that the mentioned contract containing the hidden
25 clause, was never explained to the Plaintiff, so Plaintiff was never aware of waiving
26 Fourteenth Amendment rights through a contract of adhesion (illegal and/or void contract) or
27 the product of disparity in the parties' bargaining power.
28

1 **51.** Most contracts of adhesion are either procedural and/or substantively unconscionable and,
2 the unconscionability alone should void the cognovit clause of this adhesion contract.

3 **52.** Plaintiff is aware that in a civil proceeding, acquiescence in the loss of fundamental rights
4 will not be presumed, and, that the rights to due process in a civil judgment are subject to
5 waiver. Plaintiff emphatically states that the contract of adhesion was a take it or leave it
6 offer and the cognovit clause was never an issue raised with emphasis, or even raised at all,
7 by the Defendants during the signing ceremonies.

8 **53.** Based upon the Plaintiff's recent extensive study of cognovit notes for this matter; (1) this
9 contract was never open to any negotiations, for it was a contract of adhesion, as the parties
10 were not parties of equal bargaining power; (2) the Defendants never gave the Plaintiff any
11 extra consideration in order to obtain any confession of judgment (cognovit note) clause, nor
12 was the cognovit issued under any other substantial benefit and/or consideration including
13 and not limited to a reduction in installment payments or reduction in interest rates; (3) there
14 was no contention or acknowledgment that the Plaintiff was aware of the legal (detrimental)
15 consequences of the cognovit provision; (4) this Court should vacate this prejudgment
16 (confession of judgment or cognovit note) as a matter of law for showing that Plaintiff's
17 natural Rights to due process were violated.

18 **54.** The clear lack of evidence that Plaintiff ever intentionally, deliberately, and/or knowingly
19 waived due process rights is further supported by this very Complaint. Natural rights
20 cannot be waived even if that is the intent of the Plaintiff.

21 **55.** At all times material to this Complaint Plaintiff never waived Constitutional rights to a trial by
22 jury under any circumstances, much less willingly, knowingly, or intentionally.

23 **56.** The United States Supreme Court and the great majority of State Supreme Courts have all
24 adopted the concept as; State's that use cognovit procedure was found unconstitutional,
25 unless, the debtor knowingly and understandingly consented to the authorization to confess
26 judgment.

27 **57.** In National Equipment Rental, Ltd. v. Szukent, 375, U.S. 311 (1962), the Court
28 observed: "It is settled ...that parties to a contract may agree in advance to submit to the

jurisdiction of a given court, to permit notice to be served by the opposing party, or even to waive notice altogether." Id., at 315-316.

58. And, in Boddie v. Connecticut, supra, the Court acknowledges that "the hearing required by due process is subject to waiver." 401 U.S., at 378-379. In another case on point is from New Jersey when the Chief Justice described in a rather condescending tone, "a cognovit note is the loosest way of binding a man's property that was devised in any civilized country." Alderman v. Diament, 7 N.J. L. 197, 198.

59. The Supreme Court clarified another part of cognovit note when the Court stated, "we do not presume acquiescence in the loss of fundamental rights, Ohio Bell Tel., Co. v. Public Utilities Comm'n, 301 U.S. 292, 307 (1937), that standard was fully satisfied here."

60. The United States Supreme Court makes it very clear that any one may waive their due process rights and/or any other right but in order to do so, one must intentionally, knowingly, deliberately, and voluntarily do so.

61. The consequences or legal detriment to waiving one's Rights must be based only upon an intelligent decision having been presented with the consequences of entering into an agreement having a cognovit clause, (note and/or confession of judgment clause).

62. Because a cognovit note deprives the debtor knowledge and of notice that their property is being seized, without recourse, or, without benefit of hearing or appeal, courts demand "clear and convincing evidence" that the written waiver is "voluntary, knowing, and intelligently made." The question of waiver is factual not presumptive. This, a jury must decide.

63. The Plaintiff is now schooled in the confession of judgment theory through Defendants' application of a hidden within, cognovit note, and, agrees that the knowing and voluntary waiver of one's due process Rights would be pertinent, if, it was truly evident in the present case. Plaintiff agrees that the due process rights to notice and hearing prior to a civil judgment are subject to waiver.

1 64. Because the cognovit note deprives the debtor of notice that their property is about to be
2 seized, without benefit of hearing, or right to appeal,, courts demand "clear and convincing
3 evidence" that the written waiver was "voluntary, knowing, and intelligently made."

4 65. In order for the Defendants to substantially support their position that Plaintiff did voluntarily
5 waive due process rights, Plaintiff states that there was never any warning paragraph, bold
6 letters, bold sentences and/or no warning statement to merit any concern on behalf of the
7 Plaintiff. One would think to guarantee this basic constitutional question, which is now
8 before this court, the Defendants should have a warning as the following warning to serve
9 as an example:

10 **"WARNING –By signing this paper you give up your right to**
11 **notice and court trial. If you do not pay on time a court judgment may be taken**
12 **against you without your knowledge and the powers of a court can be used to collect**
13 **from you or your employer regardless of any claims you may have against the**
14 **creditor whether for returned goods, faulty goods, failure on their part to comply with**
15 **the agreement, or any other cause."**

16 66. Plaintiff once again reiterates that Plaintiff was never made aware of any cognovit note
17 and/or confession of judgment at the time of their entering into the contract with the
18 Defendants, or that, Plaintiff ever knowingly waived any Constitutionally guaranteed rights.
19 Defendants never spent any time on this subject with Plaintiff.

20 67. After carefully examining the executed documents Plaintiff still cannot find any specific
21 references that Plaintiff has, in any way, waived any Constitutionally guaranteed rights upon
22 execution of Defendants' documents.

23 68. Based upon further review, the Plaintiff never witnessed and/or was never verbally
24 instructed, concerning the loss of due process rights. Any one may give up their rights, but,
25 only those specifically bargained for.

26 69. Further, Plaintiff never knowingly, and voluntarily waived rights to notice and hearing, and,
27 was wholly unaware of the legal consequences appertaining thereto.
28

1 **70.** Plaintiff moves this Court to vacate the illegally obtained cognovit note and protect Plaintiff's
2 due process Rights from further willful deprivations by Defendants.

3 **71.** This Court must hear the constitutional questions as a matter of law and have a jury to
4 determine due process violations as questions of fact.

5
6 **THIRD CAUSE OF ACTION FOR DEPRIVATION OF PLAINTIFF'S RIGHTS DUE TO**
7 **UNCONSCIONABILITY AND ADHESION CONTRACTS**

8 **72.** Plaintiff hereby incorporates all previously numbered paragraphs as if they are set forth at
9 length herein.

10 **73.** Other factors that this Court must take into consideration, besides the unconstitutionality of
11 the purposefully disguised confession of judgment, and/or the cognovit note, incognito, but
12 also must consider contracts of adhesions are procedurally and substantively
13 unconscionable contracts, and contract foundations built upon mistakes, inadvertence,
14 excusable negligence, newly discovered information, fraudulent conveyance,
15 misrepresentation and fraud in the inducement in violation of Federal and California State
16 law.

17 **74.** The very existence of a contract is the very heart of our commercial system as both parties
18 operate in good faith and any "illegal provisions of the contract are "void," and thus those
19 provisions were never part of a validly formed contract." **Three Valleys Mun. Water Dist. v.**
20 **E.F. Hutton & Co., 925 F.2d 1136, 1140 (9th Cir. 1991),** and "voidness" challenges go to
21 the very existence of a contract provision, and are not merely a defense to a legally formed
22 contract." And one valid defense that the Defendants are raising is "unconscionability is not
23 merely a defensive doctrine but rather it goes to the predicate of whether a contract was
24 validly formed in the first place." **California Grocers Ass'n, Inc. v. Bank of America, 22**
25 **Cal.App.4th 205, 217 1994);** and the "Doctrine of Unconscionability," procedural and/or
26 substantively are the tools to determine the validity of any contract thus ignoring for now the
27 four main elements of a contract.
28

- 1 75. Plaintiff is raising the unconscionability (ARS 47-2302 Unconscionable contract or
2 clause) as referenced in "Blake v. Ecker, 93 Cal.App.4th 728, 742 (2001)" (the
3 substantive element of unconscionability "traditionally involves contract terms that are so
4 one-sided as to 'shock the conscience' or that impose harsh or oppressive terms.")
5 (emphasis added) (citing Armendariz, 24 Cal.4th at 114). Any one who would knowingly
6 agree to a non-judicial foreclosure, where the illegal bank appointed trustee has the power
7 to foreclose on your home at his and/or her whim, is ludicrous and would have to be totally
8 incompetent.
- 9 76. The contract is procedurally unconscionable if " the contract is a standard-form contract,
10 drafted by the party with superior bargaining power, which relegates to the other party the
11 option of adhering to its terms without modification or rejecting the contract entirely."; Flores
12 v. Transamerica HomeFirst, Inc., 93 Cal.App.4th 846, 853 (2001) (same); Mercurio v.
13 Superior Court, 96 Cal.App.4th 167, 174 (2002), rev. denied.
- 14 77. Plaintiff states emphatically that this Court should grant the temporary injunction to allow
15 defendants sufficient time to dis-prove that the Deed of Trust is, in fact, a contract void ab
16 initio, and, to dispute Plaintiff's averment to the contrary, that the creation of the contract is
17 supported by a clear and convincing intent of the Plaintiff, for existence of mutual or
18 reciprocal assent. Sanford v. Abrams (1888) 24 Fla 181, 2 So 373; Ross v. Savage
19 (1913) 66 Fla 106, 63 So 148; McCay v. Sever (1929) 98 Fla 710, 124 So 44; United
20 State Rubber Products, Inc. v. Clark (1941) 145 Fla 631, 200 So 385; Mann v.
21 Thompson (1958, Fla App D1) 100 So 2d 634.
- 22 78. The Plaintiff hereby states that for a valid contract to exist with the Defendants and/or any
23 creditor, the contract must have assent be to a certain and definite proposition. For
24 example, this Court, operating under cold neutrality, should demand that both sides produce
25 all the substantial records, including and not limited to the accounting records for a
26 determination as far as consideration. Fincher v. Belk-Sawyer Co. (1961, Fla App D3) 127
27 So 2d 130; Goff v. Indian Lake Estates, Inv. (1965, Fla App D2) 178 So 2d 910; Hewitt
28 v. Price (1969, Fla App D3) 222 So 2d 247.

- 1 79. The Plaintiff contends that without a meeting of the minds of the parties on an essential
2 element (consideration), there can be no enforceable contract. **Hettenbaugh v. Keyes-**
3 **Ozon-Fincher Ins., Inc. (1962, Fla App D3) 147 So 2d 328; Goff v. Indian Lake Estates,**
4 **Inc. (1965, Fla App D2) 178 So 2d 910.**
- 5 80. The Plaintiff has established enough doubt as to the validity of an enforceable contract that
6 this court is required to determine the enforceability of the contract and determined what
7 party breached the terms and conditions of the contract and in order to form a valid contract,
8 the parties must have a distinct understanding, common to both, and without doubt or
9 difference. Unless all understand alike, there can be no assent, and therefore no contract.
10 **Webster Lumber Co. v. Lincoln (1927) 94 Fla 1097, 115 So 498; Minsky's Follies of**
11 **Florida, Inc v. Sennes (1953 206 F2d 1; O'Neill v. Corporate Trustees, Inc. (1967) 376**
12 **F2d 818.**
- 13 81. The Plaintiff hereby declares that the Defendants have greatly injured the Plaintiff through
14 and not limited to misrepresentation, truth in lending, UDAP and unjust enrichment as a
15 result of the Defendant's deliberate, conspired, intentional, and malicious fraud. Further,
16 Defendants' and/or their counsel have violated, inter alia, the Professional Code of Conduct
17 and procured this illegal and/or voidable contract which lacks the essential elements of real
18 assent and obtained the Plaintiff's Signature as result of the exercise of duress or undue
19 influence by the other party, or procured by the fraud of one of the parties, lacks the
20 essential element of real assent and may be avoided by the injured party. **Wall v. Bureau of**
21 **Lathing and Plastering (1960, Fla App D3) 117 So 2d 767.**
- 22 82. Being that the Plaintiff is asking for this court to protect Plaintiff's due process rights and
23 stay the sale and provide the Plaintiff with their right to a Trial by Jury for the Plaintiff never
24 agreed to a non-judicial foreclosure and any creditor must prove compliance with all the
25 terms and conditions and specifically consideration and substantiate actual assent by the
26 parties upon exactly the same matters is indispensable to the formation of a contract.
27 **Bullock v. Hardwick (1947) 158 Fla 834, 30 So 2d 539; Hettenbaugh v. Keyes- Ozon -**
28

Fincher Ins. , Inc (1962, Fla App D3) 147 So 2d 328; General Finance Corp. V. Stratton (1963 Fla App D1) 156 So 2d 664.

83. Unconscionability is deemed to exist when a two-prong test is met, that is when it is established that both procedural and substantive unconscionability exist. Blake v. Ecker, 93 Cal App 4th 728 (2001). According to Restatement of Contracts (2nd Ed. 1990) commentary accompanying section 208.
84. Most state unconscionability jurisprudence is sub-divided into two branches: substantive and procedural. Substantive unconscionability refers to oppressively one-sided and harsh terms of a contract, while procedural unconscionability involves the manner and process by which the terms become part of the contract including unequal bargaining power and hidden contract terms. Comb v. PayPal Inc., Case No. C-02-1227 and C-02-2777 USDC CA No. Dist. San Jose Div (9th Cir. 2002); Blake, supra; Kloss v. Edward D. Jones & Co., 2002 MT 129; 310 Mont. 123; 54 P3d 1; 2002 Mont. LEXIS 223 (MT Sup Ct 2002).
85. The process by which a contract comes into existence is at the heart of procedural unconscionability such that the contract in question is typically one of adhesion. Flores v. Transamerica HomeFirst, Inc., 93 Cal App 4th 846 (2001).
86. Analysis of unconscionability begins with an inquiry into whether the contract (Deed of Trust) was a contract of adhesion i.e., a standardized contract, imposed upon the subscribing party without an opportunity to negotiate the terms and the conditions is an oppressive, "take it or leave it offer, an inequality of bargaining position when under scrutiny are so one sided that the terms and conditions are so supportive of the superior bargaining power and actually detrimental or no real negotiations and an absence of meaningful choice through an unequal bargaining position of the weaker party. Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal.4th 83, 113, 99 Cal. Rptr. 2d 745, 6 P.3d 669 (2000). Graham v. Scissor-Tail, Inc., 28 Cal.3d 807, 819, 171 Cal. Rptr. 604, 623 P.2d 165 & n.16 (1981).
87. Plaintiff never agreed to place their property in an irrevocable trust, nor, did Plaintiff ever knowingly agree to have their home subject to a power of sale clause. As a matter of fact,

1 Plaintiff hereby declares that they have never heard of that term power of sale, and, what
2 that term meant, until recently.

3 **88.** Plaintiff likewise, did not know that the term "seised" imparted a wholly different connotation
4 than "seized", whereby, upon recent understanding of Plaintiff, "seised" indicates that
5 Plaintiff actually owned their property free and clear, without encumbrance, prior to signing a
6 Deed of Trust, without benefit of consideration.

7 **89.** The concept of seising, dates back to the middle ages when the serfs, who were made to
8 consider themselves not worthy of owning land, would actually give their properties through
9 seising (gave it away absolutely free) to their masters. Today this unconscionable practice
10 is still being utilized by bankers, constituting an unjust enrichment, through concealment and
11 deception and outright stupidity on this Plaintiff, who suffers from the least susceptible
12 and/or susceptible consumer syndrome.

13 **90.** Plaintiff now challenges this practice as being procedural and substantively unconscionable
14 Clauses contained in this referenced contract (Deed of Trust) these should be challenged by
15 this court as the Deed of Trust, did not and does not represent the true intentions of the
16 Plaintiff.

17 **91.** Plaintiff would not knowingly agree to the placing of an irrevocable trust against their home
18 by any mortgage company and/or banker and would not have given their property to anyone
19 through the middle ages policy of seising. At trial, it would become apparent that the trier of
20 facts could not find an objectively clear and unambiguous expression of mutual intent of
21 these objectionable and substantively unconscionable shocking terms.

22 **92.** In the absence of conflicting parol evidence, the interpretation of a written contract is
23 essentially a judicial function subject to independent review by this Court or on appeal. A
24 trial court's threshold determination as to whether there is an ambiguity permitting the
25 admission of parol evidence is also a question of law subject to independent review.

26 **93.** If parol evidence is admissible, and the competent parol evidence is in conflict, the
27 construction of the contract becomes a question of fact. However, if the parol evidence is
28 not conflicting, the appellate court will independently construe the writing.

- 1 **94.** The duty of this Court is to schedule a hearing and permit the Defendants to actually
2 produce documented evidence that Plaintiff, understood that Plaintiff was already lawfully
3 seised of property, prior to signing the Deed of Trust, and thereafter, knowingly,
4 intentionally, and, deliberately agreed to a (unseen) power of sale clause, and, irrevocable
5 grant, executed, without consideration, to the sole benefit of Defendants.
- 6 **95.** However, this Court should also recognize the risk that such provisions may be included in a
7 trust deed or mortgage without the debtor's knowledge or understanding. Clauses such as
8 this are often termed "dragnet" or "anaconda," as by their broad and general terms they
9 enwrap the unsuspecting debtor in the folds of indebtedness and deceptive practices
10 (concealing deceptively, the power of sale clause in which Plaintiff never was told and/or
11 knew that it was actually part of the alleged contract).
- 12 **96.** The proponent of a dragnet clause bears the burden of establishing that the parties
13 intended all existing or contemporaneous clauses to be included within its scope. A trust
14 deed containing a dragnet clause that is printed on a standard bank form is considered a
15 **contract of adhesion** under California law.
- 16 **97.** Although **contracts of adhesion** are generally enforceable according to their terms, a
17 provision contained in such a contract cannot be enforced if it does not fall within the
18 reasonable expectations of the weaker or adhering party.
- 19 **98.** This Court should examine a number of factors in determining whether broadly worded
20 dragnet clauses (Seised and irrevocable trust) was mutually intended by the parties to be
21 included in the terms and conditions: (1) the language and specificity of the dragnet clause;
22 (2) whether the parties were aware of the dragnet clause and appreciated its significance
23 and would have benefited by their existence; (3) were the clauses procedurally and/or
24 substantively unconscionable and benefited the one party at the expense of the other party
25 taking into account the degree of negotiability being exerted upon the smaller party with
26 inferior bargaining position against the larger party with superior bargaining power.
- 27 **99.** The Defendant's intentional concealment of the Power of Sale Clause in the Deed of Trust
28 further insures Plaintiff's allegations of deceptive intentions of the Defendants.

- 1 **100.** Plaintiff hereby avers that for this Court to precede with this sale, this Court must find an
2 objective and clear unambiguous expression of mutual intent to where the Plaintiff
3 intentionally, deliberately, knowingly desired to place the home into a non-revocable trust, to
4 allow the Defendant's to have the home seised, power of sale and knowingly waived due
5 process rights including and not limited to trial by jury. This Court has in its inherent
6 authority, the duty to stop this "Deed of Trust Sale" upon the unsuspecting mortgagor in the
7 folds of indebtedness embraced and secured in the mortgage which Plaintiff did not
8 contemplate or understand their presence or implications.
- 9 **101.** However, "[t]here are two judicially imposed limitations on the enforcement of adhesion
10 contracts or provisions thereof. The first is that such a contract or provision which does not
11 fall within the reasonable expectations of the weaker or 'adhering' party will not be enforced
12 against him The second - a principle of equity applicable to all contracts generally - is
13 that a contract or provision, even if consistent with the reasonable expectations of the
14 parties, will be denied enforcement if, considered in its context, it is unduly oppressive or
15 'unconscionable.
- 16 **102.** The irrevocable trust, the hidden power of sale clause, due process violations and the
17 seising clauses are four examples of Plaintiff being involved with procedurally and
18 substantively violations of unconscionability, thus voiding this contract from its incipience.
- 19 **103.** A contract of adhesion is "a standardized contract, which, imposed and drafted by the party
20 of superior bargaining strength, relegates to the subscribing party only the opportunity to
21 adhere to the contract or reject it" (Armendariz v. Foundation Health Psychcare Serv., 24
22 Cal 4th 83 at 113 (2000); reflected in Martinez v. Master Protection Corp., 118 Cal.
23 App. 4th 107; 2004 Cal. App. LEXIS 638 (2004) -- is not unconscionable merely because
24 of disparity of the parties' bargaining position (Gilmer v. Interstate/Johnson Lane Corp.,
25 500 US 20; 114 L. Ed. 2d 26, 111 St. Ct. 1647 (1991). Rather, the procedural
26 unconscionability must co-exist with substantive components that include harsh or one-
27 sided results that "shock the conscience". Soltani v. West. & So. Life Ins. Co., 258 F.3d
28 1038 (9th Cir. 2001); Ferguson v. Countrywide Credit Industries, Inc., 298 F.3d 778;

2002 U.S. App. LEXIS 14739 (9th Cir. 2002); Circuit City Stores, Inc. v. Mantor, 335 F.3d 1101; 2003 U.S. App. LEXIS 14607 (9th Cir. 2003).

104. When a party to a contract possesses far greater bargaining power (Defendants and/or any creditor) than another party (Plaintiff), or when the stronger party pressures, harasses, or compels another party into entering into a contract, "oppression and, therefore, procedural unconscionability, are present." Ingle v. Circuit City Stores, Inc., 328 F.3d 1165, at 1172 (9th Cir. 2003) (quoting Ferguson v. Countrywide Credit Indus., Inc., 298 F.3d 778 (9th Cir. 2002); Kinney v United HealthCare Services, Inc., 70 Cal App 4th 1322 (1999).

105. Substantive unconscionability addresses the fairness of the term in dispute. It traditionally involves contract terms that are so one-sided as to "shock the conscience," or impose harsh or oppressive terms. Historically, courts looked to the common law for discerning the existence of substantive unconscionability as in Rakoff, Contracts of Adhesion: An Essay in Reconstruction, 96 Harv. L. Rev. 1173, 1179-1180 (1983); Slawson, Mass Contracts: Lawful Fraud in California, 48 S. Cal. L. Rev. 1, 12-13 (1974); K. Llewellyn, The Common Law Tradition 370-371 (1960).

106. "The common law, recognizing that standardized form contracts account for a significant portion of all commercial agreements...subjects terms in contracts of adhesion to scrutiny for reasonableness." Judge J. Skelly Wright set out the state of the law succinctly in Williams v. Walker-Thomas Furniture Co., 121 U. S. App. D. C. 315, 319-320, 350 F. 2d 445, 449-450 (1965) (footnotes omitted):

107. "Ordinarily, one who signs an agreement without full knowledge of its terms might be held to assume the risk that he has entered a one-sided bargain. But when a party of little bargaining power, and hence little real choice, signs a commercially unreasonable contract with little or no knowledge of its terms, it is hardly likely that Plaintiff's consent, or even an objective manifestation of Plaintiff's consent, was ever given to all of the terms. In such a case the usual rule that the terms of the agreement are not to be questioned should be abandoned and the court should consider whether the terms of the contract are so unfair that enforcement should be withheld."

FOURTH CAUSE OF ACTION FOR DEPRIVATION OF PLAINTIFF'S RIGHTS DUE TO VIOLATION

OF TILA AND RESPA

- 108.** Plaintiff hereby incorporates all previously numbered paragraphs as if they are set forth at length herein.
- 109.** Plaintiff states that a Good Faith Estimate of the closing cost was never given.
- 110.** Plaintiff states that an early Regulation Z disclosure was never given.
- 111.** Plaintiff states that he was not given final escrow disclosure until after the loan was funded and recorded.
- 112.** Plaintiff states that he was verbally given a quote of 3 points for the loan and was charged 4 points. Basically a bait and switch tactic used to make a borrower follow through with signing the loan documents under duress.
- 113.** Plaintiff was never given copies of the 3-Day Rights of Rescission.
- 114.** Plaintiff states that the amount funded was less than what was stated on the Regulation Z form.

DECLARATORY RELIEF

- 115.** Plaintiff hereby incorporates all previously numbered paragraphs as if they are set forth at length herein.
- 116.** Pursuant to the Declaratory Judgment Act, this Honorable Court may enter a declaratory judgment to determine the rights of the Plaintiff, regarding the aforesaid claims and controversies arising therefrom.
- 117.** The primary purpose of a declaratory judgment is to quickly determine issues, if left otherwise delayed, will cause irreparable injury and harm to the Plaintiff, and, to afford certain relief from uncertainty and insecurity by effectively determining the legal rights, status and relations of the Plaintiff and the defendants.
- 118.** A declaratory judgment is absolutely necessary in the present instance to speedily effectuate the rights and status of Plaintiff in relation to the Defendants as well as

delineate the authority of each of the Defendants in their actions as taken against the Plaintiff.

119. Delay in granting Plaintiff's request for a declaratory judgment will result in irreparable harm and injury to Plaintiff, without ability to otherwise address Plaintiff's grievances to the degree and means that would be otherwise availed.

120. Declaratory judgments are proper when (1) an actual controversy exists, (2) litigation appears imminent and inevitable, (3) the Plaintiff has a direct, substantial and present interest, and (4) the declaration sought will be of practical help in ending the controversy.

121. An actual controversy exists between Plaintiff and Defendants, both individually and collectively, as Defendants continue to usurp Plaintiff's rights, unabated, in the wholesale deprivation of Plaintiff's rights and, abrogation of Plaintiff's property.

122. Additional litigation is imminent and inevitable, pending this court's determination of the controversy, that in the absence thereof, Plaintiff will be forced to proceed in securing their rights, as opposed to Defendants meritless and/or unlawful actions undertaken against Plaintiff.

123. Plaintiff clearly has a direct, substantial and present interest in the controversy.

124. A declaratory judgment will aid in ending the controversy, or in the alternative, clearly establish the rights of Plaintiff and the authority and/or lack thereof, of defendant(s).

INJUNCTIVE RELIEF

125. Plaintiff hereby incorporates all previously numbered paragraphs as if they are set forth at length herein.

126. Plaintiff's right to injunctive relief seems clear: An injunction is absolutely necessary to avoid a further and yet greater injury, as result of Defendants continued and unbridled actions.

Plumbing Supply Company v. City of Dayton, 138 Ohio St. 540, 38 N.E. 2d 70, 72, 137 A.L.R. 1058; Stoner v. Higginson, 316 Pa. 481, 175 A. 527, 531.

All litigants have a Constitutional right to have their claims adjudicated according to the rule of precedent. See **Anastasoff v. United States**, 223 F.3d 898 (8th Cir. 2000).

The Plaintiff never knew that Plaintiff was entering into a non-judicial foreclosure contract and was never advised about unknowingly waving Federal and State Constitutional rights to have a trial by Jury. "We are bound to interpret the Constitution in the light of the law as it existed at the time it was adopted." **Mattox v. U.S., 86 S.Ct. 237 (1938).**

"Nothing can be more material to the obligation than the means of enforcement. Without the remedy the contract may, indeed, in the sense of the law, be said not to exist, and its obligation to fall within the class of those moral and social duties which depend for their fulfillment wholly upon the will of the individual. The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion. The obligation of a contract 'is the law which binds the parties to perform their agreement.' RED CROSS LINE vs. ATLANTIC FRUIT COMPANY. 264 U.S. 109, 68 L. Ed. 582, 44 S. Ct. 274 February 18, 1924 Decided.

For want of all of the above, Plaintiff now seeks this honorable Court's immediate intervention for the re-establishment and/or protection of Plaintiff's rights. Plaintiff believes, in consideration of all of the foregoing, that Plaintiff has established just and proper cause for this Court to immediately intervene, by enjoining Defendants from any further action, lest further, irreparable harm and injury, and loss of property befall Plaintiff; and, to further issue declaratory relief consistent herewith.

WHEREFORE, Plaintiff respectfully prays upon this court to grant Plaintiff declaratory and injunctive relief, consistent with the findings of the aforesaid, including, but not limited to, enjoining the above-named Defendants, as well as any party, yet unnamed Defendant(s), from Selling, Converting, or, by any means whatsoever, Dispossessing Plaintiff of Property, until all Facts, are Clarified, as to be

1 determined following the completion of discovery, which is now pending, and, to provide Plaintiff,
2 thereafter, Oral Argument, and/or any other relief this court deems just and proper.

8 Respectfully Submitted,

10  3/5/10

12 Dorn Oens



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City: <u>VANTURA</u> State: <u>CA</u> Zip: <u>93001</u>			
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dale S. Fischer and the assigned discovery Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

CV10- 1636 DSF (RZx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

#39
UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input checked="" type="checkbox"/> Dorn Oens	DEFENDANTS Independent Hom Loan, First National T.D. Service, National T.D. Service, Marshall R. Murphy, Mariellen L. Murphy, Paul Margolis, Barry Nisen, Does 1-10
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Pro Se	Attorneys (If Known) not known

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width: 100%;"> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)
CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT: \$** Injunctive relief

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Title 42, Section 1938 and others. This is a civil rights action under 42 U.S.C. § 1983 for violation of Plaintiff's constitutional rights.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

#30
UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Ventura	

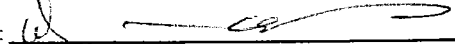
- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Ventura	

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Santa Barbara	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  **Date** March 5, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

FOR OFFICE USE ONLY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DORN OENS

PLAINTIFF(S)

v.

Independent Home Loan, First National T.D. Service,
National T.D. Service, Marshall R. Murphy,
Mariellen L. Murphy, Paul Margolis, Barry Nisen,
Does 1-10

DEFENDANT(S).

CASE NUMBER

CV10 1636

DSF(RZX)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney
Dorn Oens, whose address is:

6985 Vista Del Rincon Dr., Ventura, CA 93001

FOR OFFICE USE ONLY

an answer to the ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim
which is herewith served upon you within 21 days after service of this Summons upon you, exclusive
of the day of service. If you fail to do so, judgement by default will be taken against you for the relief
demanded in the complaint.

Dated: 3-5-10

Clerk, U.S. District Court

By: _____

Deputy Clerk

(Seal of the Court)

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